

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Petition for Rulemaking To Determine The)
Terms and Conditions Under Which Tier 1)
LECs Should be Permitted to Provide)
InterLATA Telecommunications Services)

RM-8303

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

REPLY COMMENTS OF NEXTEL COMMUNICATIONS, INC.

Nextel Communications, Inc. ("Nextel"), by its attorneys, hereby files reply comments in response to the Petition for Rulemaking submitted by five Bell Operating Companies ("BOC Petition") seeking the Federal Communications Commission's determination that BOC provision of end-to-end telecommunications services, including interLATA interexchange services is in the public interest.^{1/} For the reasons discussed below, Nextel opposes the BOC Petition.

Nextel (formerly Fleet Call) was founded in 1987 by individuals with extensive experience in the mobile radio communications industry. Nextel principally holds Commission licenses for Specialized Mobile Radio ("SMR")

^{1/} The BOC Petitioners are Bell Atlantic, BellSouth, NYNEX, Pacific Telesis and Southwestern Bell. Under the Modification of Final Judgment, the BOCs are prohibited from providing interLATA transmission services. See United States v. Western Electric, 552 F.Supp. 131, 226-34 (D.D.C. 1982).

systems in the nation's largest markets and provides dispatch, interconnect and related services to its customers.

Responding to the explosive growth in consumer demand for wireless communications services, Nextel conceptualized and is implementing Enhanced Specialized Mobile Radio ("ESMR") systems using digital mobile technology. These ESMR systems are advanced, highly-efficient mobile communications systems that incorporate innovative technologies to increase dramatically the capacity, service flexibility and quality of its existing communications systems. Nextel initiated the nation's first ESMR service in Los Angeles in August of 1993 and anticipates commencing operations in other markets in the near future. Nextel is committed to promoting the nationwide availability of advanced mobile communications services.

Nextel's interest in the BOC Petition arises from its experience as an SMR operator and its ongoing negotiations with various BOCs for interconnection for its current and future ESMR systems. Nextel agrees with virtually all the commenters that the BOC Petition paints an inaccurate portrait of the state of competition in both the interexchange and local exchange markets. Further, Nextel agrees with other commenters that the end-to-end, vertically integrated structure the BOCs seek to achieve would adversely affect the development of overall competition in the telecommunications market. For these reasons, the Commission should not accept the BOCs' invitation to adopt rules for interLATA services relief.

I. The BOCs Have Not Demonstrated That Local Loop Competition Exists.

The BOC Petition proceeds from an unsupported premise that the BOCs are handicapped by their inability to offer "one stop shopping" for local, interLATA, mobile and CPE services and must therefore be permitted to provide interLATA services. Pointing to the proliferation of PBXs, the growth of wireless service providers, competitive access providers and service diversification of cable operators, the BOC Petition asserts that these "local exchange competitors" are "rapidly assembling full-fledged alternative networks, using new architectures, new media, and radically new technologies."^{2/} Similarly, the BOC Petition observes that AT&T's decision to purchase McCaw "must be viewed as a decision to reenter the local telephone business in direct competition with the Bell Companies."^{3/} The BOCs claim they cannot provide similar levels of local and interexchange integration.

As the comments filed in this proceeding demonstrate, the BOC rhetoric vastly overstates the threat local exchange competition poses to current BOC monopoly bottlenecks and overestimates the ability of any potential local competitor to provide comparable competing services.^{4/} For example, the BOCs' claim that cellular is competitive is totally contradicted by the BOCs' own prior

^{2/} BOC Petition at 14.

^{3/} BOC Petition at 18.

^{4/} See Comments of Competitive Telecommunications Association at 9-14; Comments of Capital Network System, Inc. at 18-20; Comments of Wiltel, Inc. at 6-7.

statements that cellular carriers occupy a market separate from landline services.^{5/} Currently, cellular carriers use the local exchange bottleneck to complete 99 percent of their calls.^{6/} ESMR and other similar offerings also rely upon interconnection with the local exchange to provide mobile telephone access to the public switched telephone network. In any case, Nextel has just begun to implement the first ESMR system and is far from providing ubiquitous service competitive with the local exchange. ESMR will be competitive with cellular for many customers but will not be a substitute for landline services.

Even more ludicrous is the BOC claim that Personal Communications Services is a presence in the local exchange market. The Commission has not yet adopted licensing rules for PCS. Once PCS spectrum auctions have been conducted and licenses are awarded, there will be an additional time lag prior to initiation of service while equipment is developed, operational fixed microwave licensees are relocated and networks are constructed.^{7/}

5/ See Comments of Competitive Telecommunications Association at 10-11; Report of the Bell Companies on Competition in Wireless Telecommunications Services, 1991, October 31, 1991 at 184-85.

6/ See Comments of Capital Network Systems at 19.

7/ Similarly, the possibility of releasing 200 MHz of government spectrum designated in the Emerging Telecommunications Technologies Act of 1993 for commercial use over a 15 year period cannot be considered in any reasonable analysis of current competition. The legislation in fact does not specify the services the Commission should allocate spectrum to and therefore it is mere speculation that any or all of the Emerging Technology spectrum will be dedicated to services competitive with landline telephone service.

In sum, the BOC assertions that wireless service competitors are significantly eroding their local exchange monopolies are baseless. These assertions simply do not provide the factual predicate for BOC interLATA services relief.

II. The Relief Sought by the BOCs Raises Concerns Regarding Discriminatory Interconnection.

The BOCs seek establishment of rules to facilitate their combined provision of local landline, cellular, intraLATA and interLATA interexchange service and CPE. Recognizing that this end-to-end bundling of service raises the potential for anti-competitive discrimination, the BOC Petition argues that extension of existing non-structural competitive safeguards to their provision of interLATA services adequately protects the public and would be competitors.^{8/}

The public interest requires that the Commission consider these arguments in the context of a disappointing history of BOC interconnection abuses of their monopoly local exchange facilities. In particular, the BOC have repeatedly attempted to discriminate in favor of their own mobile communications affiliates in providing interconnection to non-affiliated wireless service providers.^{9/} The BOCs have repeatedly manipulated the split of federal and

^{8/} Nextel agrees with other commenters who have forcefully stated the need for additional, far more stringent structural regulations in the event that the Commission determines that the formulation of interLATA rules is appropriate.

^{9/} The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, Memorandum Opinion and Order, 59 Rad. Reg. 2d
(continued...)

state jurisdiction over communications to deny or delay providing the full, fair and reasonable interconnection the Commission has time and again stated is the right of wireless service providers and the obligation of the BOCs to provide.^{10/}

Nextel is concerned that the BOCs, if permitted into the interLATA market, will have even greater incentives to impede full and fair interconnection of the wireless entities they have identified as their competitors.

Nextel's own recent experience in attempting to negotiate an interconnection agreement with Bell Atlantic (one of the five BOC Petitioners) bears out this concern. For over ten months Nextel has, without success, attempted to reach an agreement with Bell Atlantic's affiliate, New Jersey Bell, for a standard, widely available form of mobile services interconnection. Bell Atlantic to date has refused to provide this standard form of interconnection to Nextel for its ESMR service in the greater New York-New Jersey area, even though it currently provides such interconnection to its own cellular affiliate, Bell Atlantic Mobile Systems. Bell Atlantic's refusal to provide Nextel with

9/ (...continued)

(P&F) 1275 (1986); Declaratory Ruling, 2 FCC Rcd 2910 (1987), aff'd on recon., 4 FCC Rcd 2369 (1989).

10/ Declaratory Ruling, 2 FCC Rcd 2910, 2911 (1987); Memorandum Opinion and Order on Reconsideration, 4 FCC Rcd 2369, 2369-70 (1989); Expanded Interconnection with Local Telephone Company Facilities, Memorandum Opinion and Order, 8 FCC Rcd 4133, 4135 (1993); Expanded Interconnection with Local Telephone Company Facilities, Report and Order, 7 FCC Rcd 7369, 7403, 7486-7489 (1992) (Special Access Order); Amendment of the Commission's Rules to Establish New Personal Communications Services, Notice of Proposed Rule Making and Tentative Decision, 7 FCC Rcd 5676, 5714 (1992).

comparable interconnection is not based upon technical feasibility constraints, but is precisely the type of unreasonably discriminatory anti-competitive behavior that validates the concerns expressed by opponents of the BOC Petition.^{11/}

III. Conclusion

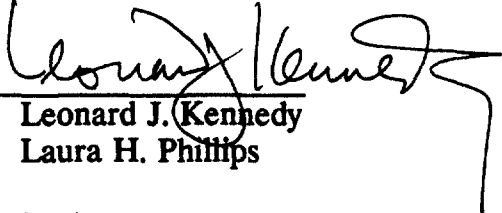
The Petitioners have failed to demonstrate that any portion of the market for local communications is competitive or that the vertical integration of BOC local monopoly bottlenecks with interLATA services and CPE would yield any advantage to the public. Similarly, the BOC Petition fails to make the case that non-structural safeguards represent adequate protection for BOC local monopoly customers and competitors against discrimination and cross-subsidy. Virtually every commenter agrees that a rulemaking to develop interLATA rules

^{11/} If not remedied, Bell Atlantic's refusal to offer Nextel Type 2A access tandem interconnection for its ESMR system, by either contract or tariff, would also violate the recent amendments of the Communications Act requiring LECs to provide non-discriminatory interconnection to all commercial mobile services carriers as well as Bell Atlantic's MFJ interconnection obligations and current Commission policy.

is premature at best. For all the forgoing reasons, Nextel submits that the Commission should not embark on a rulemaking based upon the record before it.^{12/}

Respectfully submitted,

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^{12/} Should the Commission decide to initiate a proceeding, it must establish rules that will prevent BOCs and their wireless and other affiliates from bundling services in any manner that reduces competition.

CERTIFICATE OF SERVICE

I, Roberta Fidele, hereby certify that today on this 17th day of September, 1993, I caused a copy of the REPLY COMMENTS OF NEXTEL COMMUNICATIONS, INC. to be served by hand delivery or first-class mail, postage prepaid to the following:

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